

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
No. 3:20-cv-00596

Johnny H. Coble, Jr. and Robin Coble, both on behalf of their minor child "J.H.C", Plaintiff, v. Lake Norman Charter School, Inc., <i>et al.</i> , Defendants.	DEFENDANTS' RESPONSE TO PLAINTIFFS' REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF
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Defendants Lake Norman Charter School, Inc., and its Board members who have been sued only in their official capacity¹ hereby respond to plaintiffs' request for preliminary injunctive relief as follows:

On October 29, 2020, Plaintiffs filed their "Motion for TRO and/or Preliminary Injunction," an amendment thereto, and a motion to expedite consideration. (Doc. Nos. 3-5). This Court held a hearing on November 4th to address the request for a TRO.

On November 6th, this Court denied plaintiffs' request for a temporary restraining order. (Doc. No. 10). On November 9th, plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit and requested an injunction pending appeal. Because a denial of a preliminary injunction is appealable on an

¹ Because the individuals named as defendants have been sued only in their official capacities as Board members, LNC asks that the Court formally dismiss them from the lawsuit so that the litigation can proceed against the real party in interest: Lake Norman Charter School.

interlocutory basis, but denial of a TRO is not, plaintiffs argued before the Fourth Circuit that “[t]he district court’s order is, in form and effect, a denial of the TRO but also the preliminary injunction.” (4th Cir. Doc. No. 8 at p. 3.)² A three-judge panel denied plaintiffs’ motion for an injunction pending appeal on November 10, 2020. The appeal, itself, remains pending.

Given their position that this Court’s November 6th Order constituted a denial of their request for preliminary injunctive relief, plaintiffs are judicially estopped from now contending otherwise. Accordingly, there is no longer a live controversy before the Court on this issue.

Respectfully submitted, this the 12th day of November 2020.

/s/ James G. Middlebrooks

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² Defendants disagree with plaintiffs’ characterization of the November 6th Order, but this is neither the time nor place to argue the point.

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Defendant's Response to Plaintiffs' Motion for Preliminary Injunctive Relief through Court's CM-ECF on-line filing system, which will transmit copies to counsel for Plaintiff.

This the 12th day of November, 2020.

/s/ James G. Middlebrooks
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